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### Trademarks > Trademark Electronic Search System (TESS)

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## CRACKER CRISPS

Word Mark

CRACKER CRISPS

Goods and Services

(ABANDONED) IC 030. US 046. G & S: Crackers

Standard Characters

Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

78835621

**Filing Date** 

March 13, 2006

**Current Basis** 

1B

**Original Filing Basis** 

1B

Owner

(APPLICANT) Royal Wine Corporation CORPORATION NEW YORK 63 North Hook Road

Bayonne NEW JERSEY 07002

Attorney of Record

Paulette R. Carey

Disclaimer

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "cracker" APART FROM THE

MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

DEAD

**Abandonment Date** 

March 2, 2007

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To:

Royal Wine Corporation (prcarey@buchmanlaw.com)

Subject:

TRADEMARK APPLICATION NO. 78835621 - CRACKER CRISPS - N/A

Sent:

8/31/06 1:22:00 PM

Sent As:

ECOM105@USPTO.GOV

Attachments: Attachment - 1

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## UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO:

78/835621

APPLICANT:

Royal Wine Corporation

CORRESPONDENT ADDRESS:

PAULETTE R. CAREY

BUCHMAN LAW FIRM, LLP

SUITE 200

RETURN ADDRESS:

Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451

510 THORNALL STREET EDISON, NJ 08837

MARK: CRACKER CRISPS

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

prcarey@buchmanlaw.com

Please provide in all correspondence:

- Filing date, serial number, mark and applicant's name.
- 2. Date of this Office Action.
- Examining Attorney's name and Law Office number.
  - 4. Your telephone number and e-mail

### OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/835621

The assigned trademark examining attorney has reviewed the referenced application and has determined the following:

### Search Results - No Likelihood of Confusion

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

However, please note the following grounds for refusal.

### Section 2(e)(1) - Descriptive Refusal

Registration is refused because the proposed mark merely describes the goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 et seq.

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods and/or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); In re MetPath Inc., 223 USPQ 88 (TTAB 1984); In re

Bright? Crest, Ltd., 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b). A mark that describes an intended user of a product or service is also merely descriptive within the meaning of Section 2(e)(1). Hunter Publishing Co. v. Caulfield Publishing Ltd., 1 USPQ2d 1996 (TTAB 1986); In re Camel Mfg. Co., Inc., 222 USPQ 1031 (TTAB 1984); In re Gentex Corp., 151 USPQ 435 (TTAB 1966).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. In re Polo International Inc., 51 USPQ2d 1061 (TTAB 1999) (Board found that DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); In re Digital Research Inc., 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT PC-DOS found merely descriptive of "computer programs recorded on disk;" it is unnecessary that programs actually run "concurrently," as long as relevant trade clearly uses the denomination "concurrent" as a descriptor of this particular type of operating system); In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985); In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985) ("Whether consumers could guess what the product is from consideration of the mark alone is not the test"); TMEP §1209.01(b).

Applicant has applied to register the mark CRACKER CRISPS for crackers. The word CRACKER in the mark is generic for the goods and has been disclaimed by the applicant. The word CRISPS describes firm but easily broken or crumbled, which is a feature of the applicant's CRACKERS. See the attached dictionary definition. Please also see the attached third-party registrations where the Office has treated the word CRISPS as descriptive and required a disclaimer.

Applicant's mark immediately conveys to consumers that applicant's goods are CRACKERS that are firm but easily broken, or crispy. A term need not describe all of the purposes, functions, characteristics or features of the goods and/or services to be merely descriptive. For the purpose of a Section 2(e)(1) analysis, it is sufficient that the term describe only one attribute of the goods and/or services to be found merely descriptive. In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); In re MBAssociates, 180 USPQ 338 (TTAB 1973); TMEP §1209.01(b).

Accordingly, registration of the proposed mark is refused because it is merely descriptive of applicant's goods.

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

### Supplemental Register

Although an amendment to the Supplemental Register would normally be an appropriate response to this refusal, such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b), 15 U.S.C. §1051(b), and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been timely filed. 37 C.F.R. §2.47(d); TMEP §§815.02, 816.02 and 1102.03.

If applicant files an amendment to allege use and also amends to the Supplemental Register, please note that the effective filing date of the application will then be the date of filing of the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§206.01 and 816.02.

Although Supplemental Register registration does not afford all the benefits of registration on the Principal Register, it does provide the following advantages:

The registrant may use the registration symbol ®;

 The registration is protected against registration of a confusingly similar mark under §2(d) of the Trademark Act, 15 U.S.C. §1052(d);

· The registrant may bring suit for infringement in federal court; and

 The registration may serve as the basis for a filing in a foreign country under the Paris Convention and other international agreements.

### Response Guidelines

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <a href="http://www.uspto.gov/teas/index.html">http://www.uspto.gov/teas/index.html</a>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §\$2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

Please note that there is no required format or form for responding to this Office action. However, applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond in writing to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., explain why it should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

If applicant's attorney has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/Pamela N. Hirschman/ Trademark Examining Attorney Law Office 105 571-272-8272



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## POPCORN CRISPS

**Word Mark** 

POPCORN CRISPS

Goods and Services (ABANDONED) IC 030. US 046. G & S: Snack chips made with popcorn and other ingredients that are formed into a chip similar in shape to other snack chips such as potato chips or corn chips; These snack chips may be seasoned with salt, cheese, spices and other flavorings; In some regions these chips may also be called "crisps", and would be sold as "popcorn crisps"

Standard Characters Claimed

Mark Drawing

Code

(4) STANDARD CHARACTER MARK

Serial Number

78973892

Filing Date

September 13, 2006

Current Basis
Original Filing

1B

Basis

1B

Owner

(APPLICANT) McGregor and McAllan CORPORATION NEVADA 925 Wild Oak Drive Santa Rosa

CALIFORNIA 95409

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

DEAD

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To:

McGregor and McAllan (925wildoak@gmail.com)

Subject:

TRADEMARK APPLICATION NO. 78973892 - POPCORN CRISPS - N/A

Sent:

9/26/2006 10:22:16 AM

Sent As:

ECOM102@USPTO.GOV

Attachments: Attachment - 1

Attachment - 2

### UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO:

78/973892

APPLICANT:

McGregor and McAllan

CORRESPONDENT ADDRESS:

MCGREGOR AND MCALLAN

925 WILD OAK DR

SANTA ROSA, CA 95409-6122

RETURN ADDRESS:

Commissioner for Trademarks P.O. Box 1451

Alexandria, VA 22313-1451

MARK:

POPCORN CRISPS

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

925wildoak@gmail.com

Please provide in all correspondence:

- 1. Filing date, serial number, mark and applicant's name.
- 2. Date of this Office Action.
- Examining Attorney's name and Law Office number. 4. Your telephone number and e-mail

### OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at http://tarr.uspto.gov/, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/973892

The assigned examining attorney has reviewed the referenced application and determined the following.

### NO CONFLICTING MARK NOTED

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

### MARK IS MERELY DESCRIPTIVE

Registration is refused because the proposed mark is merely descriptive of the identified goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 et seq. Moreover, the proposed mark appears to be generic as applied to the goods and, therefore, incapable of functioning as a source-identifier for applicant's goods. In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991).

The applicant applied to register the mark **POPCORN CRISPS** for "snack chips made with popcorn and other ingredients that are formed into a chip similar in shape to other snack chips such as potato chips or corn chips; these snack chips may be seasoned with salt, cheese, spices and other flavorings; In some regions these chips may also be called 'crisps,' and would be sold as 'popcorn crisps.'"

The term "CRISPS" is defined as "something crisp or easily crumbled." The American Heritage Dictionary of the English Language, 4<sup>th</sup> Ed. (2000). See Exhibit 1. The applicant's identification indicates that the terms "CRISPS" and "CHIPS" are interchangeable. The applicant's goods are snack chips made with popcorn.

Under these circumstances, neither an amendment to proceed under Trademark Act Section 2(f), 15 U.S.C. §1052(f), nor an amendment to the Supplemental Register, can be recommended.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

### RESPONSE GUIDELINES

Please note, there is no required format or form for responding to this Office action. The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <a href="http://www.uspto.gov/teas/index.html">http://www.uspto.gov/teas/index.html</a>. However, if applicant responds on paper via regular mail, the response should include the following information: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and, (4) applicant's telephone number.

When responding to this Office action, applicant must make sure to respond to each refusal and requirement raised. If there is a refusal to register the proposed mark, then applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as to why the refusal should be withdrawn and why the mark should register. If there are other requirements, then applicant should simply set forth in

writing the required changes or statements and request that the Office enter them into the application record. Applicant must also sign and date its response.

The applicant may wish to hire a trademark attorney because of the technicalities involved in the application. The Patent and Trademark Office cannot aid in the selection of an attorney. 37 C.F.R. §2.11.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Maria-Victoria Suarez/ Trademark Attorney Law Office 102 571-272-9264 maria-victoria.suarez@uspto.gov

### HOW TO RESPOND TO THIS OFFICE ACTION:

- ONLINE RESPONSE: You may respond using the Office's Trademark Electronic Application
  System (TEAS) Response to Office action form available on our website at
  <a href="http://www.uspto.gov/teas/index.html">http://www.uspto.gov/teas/index.html</a>. If the Office action issued via e-mail, you must wait 72
  hours after receipt of the Office action to respond via TEAS. NOTE: Do not respond by e-mail.
  THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.
- REGULAR MAIL RESPONSE: To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. NOTE: The filing date of the response will be the date of receipt in the Office, not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <a href="http://tarr.uspto.gov">http://tarr.uspto.gov</a>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <a href="http://portal.uspto.gov/external/portal/tow">http://portal.uspto.gov/external/portal/tow</a>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <a href="http://www.uspto.gov/main/trademarks.htm">http://www.uspto.gov/main/trademarks.htm</a>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.



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### Trademarks > Trademark Electronic Search System (TESS)

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# RICE CRISPS

Word Mark RICE CRISPS

Goods and Services (ABANDONED) IC 030. US 046. G & S: Rice-based snack foods, namely, tortilla chips

Standard Characters

Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85010417 Filing Date April 9, 2010

Current Basis 1B Original Filing Basis 1B

Owner (APPLICANT) Rice Investments, LP Composed of General Partner Utz Quality Foods, Inc.

Pennsylvania Corporation LIMITED PARTNERSHIP DELAWARE 900 High Street Hanover

PENNSYLVANIA 17331

Attorney of Record Kevin G. Smith

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RICE" APART FROM THE MARK AS

SHOWN

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD

Abandonment Date January 20, 2011

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To: Rice Investments, LP (tm@sughrue.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85010417 - RICE CRISPS -

S14579

Sent: 7/20/2010 1:11:21 PM

Sent As: ECOM116@USPTO.GOV

Attachments: Attachment - 1

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO.

85010417

MARK: RICE CRISPS

\*85010417\*

CORRESPONDENT ADDRESS:

KEVIN G. SMITH SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVE NW WASHINGTON, DC 20037-3202 CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/teas/eTEASpageD.htm

APPLICANT:

Rice Investments, LP

CORRESPONDENT'S REFERENCE/DOCKET

NO:

S14579

CORRESPONDENT E-MAIL ADDRESS:

tm@sughrue.com

### OFFICE ACTION

### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 7/20/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### SECTION 2(d) REFUSAL - LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2642172. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the enclosed registration.

Regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods are considered. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers, and the degree of similarity between the marks and between the goods and/or services. See Indus. Nucleonics Corp. v. Hinde, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973); TMEP §1207.01. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning may be sufficient to find a likelihood of confusion. In re White Swan Ltd., 8 USPQ2d 1534, 1535 (TTAB 1988); In re Lamson Oil Co., 6 USPQ2d 1041, 1043 (TTAB 1987); see TMEP §1207.01(b). In comparing the goods and/or services, it is necessary to show that they are related in some manner. See On-line Careline Inc. v. Am. Online Inc., 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); TMEP §1207.01(a)(vi).

### Similarity of the Marks

Applicant's mark is RICE CRISPS in standard character form. The already-registered mark is RICE CRISPS and design. The marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding of likelihood of confusion. *RE/MAX of Am., Inc. v. Realty Mart, Inc.*, 207 USPQ 960, 964 (TTAB 1980); *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469, 471 (TTAB 1975); see TMEP §1207.01(b)(iv).

Also, the word portions are generally the dominant and most significant features of marks because consumers will call for the in the marketplace by that portion. In re Appetito Provisions Co., 3 USPQ2d 1553, 1554 (TTAB 1987); In re Drug Research Reports, Inc., 200 USPQ 554, 556 (TTAB 1978). For this reason, greater weight is often given to the word portions of marks in determining whether there is a likelihood of confusion. In re Dakin's Miniatures, Inc., 59 USPQ2d 1593, 1596 (TTAB 1999); TMEP §1207.01(c)(ii). Thus, consumers will likely recall and ask for the goods using the wording RICE CRISPS and believe the goods come from the same source.

### Similarity of the Goods

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. See Safety-Kleen Corp. v. Dresser Indus., Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. In re Total Quality Group, Inc., 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); see, e.g., On-line Careline Inc. v. Am. Online Inc., 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1566-68, 223 USPQ 1289,

1290 (Fed. Cir. 1984).

Applicant's goods are "rice-based snack foods, namely, tortilla chips" and registrant's goods are "rice crackers, rice, porridge, cereal-based snack food, rice-based beverages, pastries, biscuits, vinegar, candies, tea." In this case, applicant's and registrant's goods are closely related because they both provide snack foods. Also, registrant's cereal-based snack food could encompass "rice based tortilla chips." Therefore, it is presumed the goods will be marketed in the same trade channels to the same classes of purchasers.

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely tortilla chips, candies, rice crackers and cereal based snacks, are of a kind that may emanate from a single source. In re Infinity Broad. Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001); In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); In re Mucky Duck Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

### Conclusion

In view of the foregoing, the potential for confusion is likely and registration is refused under Trademark Act Section 2(d).

Applicant should note the following additional ground for refusal.

### SECTION 2(e)(1) REFUSAL - MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes a characteristic of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

Applicant has applied to register the mark RICE CRISPS for "<u>rice</u>-based snack foods, namely, tortilla chips. "Rice" is "the edible grains of a cereal plant of South Asian origin. Rice is served hot or cold after cooking in water or other liquid." A "crisp" is "something crisp or brittle." Please see attached definitions. In this case, the mark RICE CRISPS immediately identifies the subject matter of the goods, namely, rice-based tortilla crisps, or rice crisps.

The examining attorney also attaches Internet materials showing descriptive use of the term RICE CRISPS

in relation to chips.

Accordingly, the mark RICE CRISPS merely describes the identified goods and is refused registration under Trademark Act Section 2(e) (1).

Although applicant's mark has been refused registration, applicant may respond to the refusals by submitting evidence and arguments in support of registration.

#### Assistance

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/Michele-Lynn Swain/ Examining Attorney (PH)571-272-9232 (FX)571-273-9116

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <a href="http://teasroa.uspto.gov/roa/">http://teasroa.uspto.gov/roa/</a>. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail <a href="mailto:TEAS@uspto.gov">TEAS@uspto.gov</a>.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

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TESS was last updated on Wed Jun 6 04:35:46 EDT 2012

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Start List At: OR Jump to record: Record 46 out of 74

TARR Status ASSIGN Status IDR ITAB Status (Use the "Back" button of the Internet

Browser to return to TESS)

## **BISCOTTI CRISPS**

Word Mark BISCOTTI CRISPS

Goods and Services (ABANDONED) IC 030, US 046, G & S: Grain-based snack foods, FIRST USE; 20100501, FIRST

USE IN COMMERCE: 20100501

Standard Characters

Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

 Serial Number
 85069910

 Filing Date
 June 23, 2010

Current Basis 1A
Original Filing Basis 1A

Owner (APPLICANT) Sahale Snacks, Inc. CORPORATION DELAWARE 3411 South 120th Place, Suite

100 Seattle WASHINGTON 98168

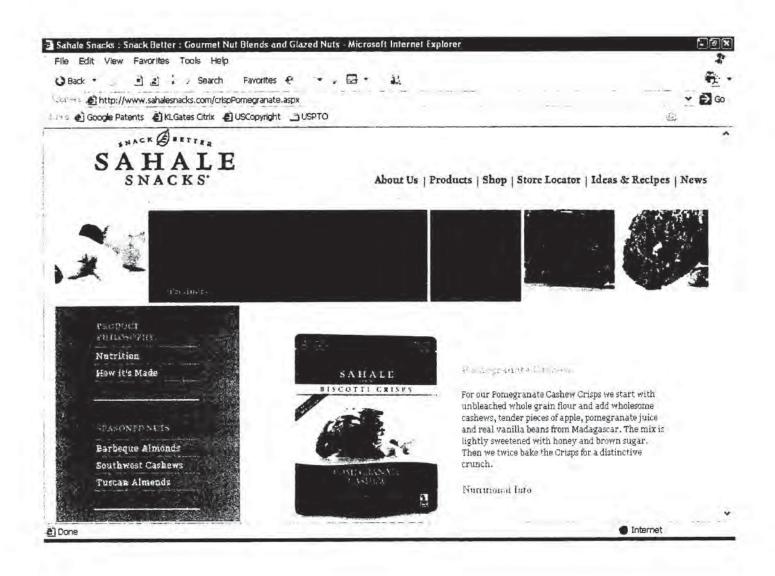
Attorney of Record Steven M. Bertone
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD

Abandonment Date April 6, 2011

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To:

Sahale Snacks, Inc. (steve.bertone@klgates.com)

Subject:

U.S. TRADEMARK APPLICATION NO. 85069910 - BISCOTTI CRISPS -

2053182.0000

Sent:

10/5/2010 4:36:33 PM

Sent As:

ECOM105@USPTO.GOV

Attachments: Attachment - 1

Attachment - 2

Attachment - 3

Attachment - 4

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Attachment - 11

### UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO.

85069910

MARK: BISCOTTI CRISPS

\*85069910\*

### CORRESPONDENT ADDRESS:

STEVEN M. BERTONE K&L GATES, LLP 618 W RIVERSIDE AVE STE 300 SPOKANE, WA 99201-5102

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/teas/eTEASpageD.htm

APPLICANT:

Sahale Snacks, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

2053182.0000

CORRESPONDENT E-MAIL ADDRESS:

steve.bertone@klgates.com

### OFFICE ACTION

### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO

MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

#### ISSUE/MAILING DATE: 10/5/2010

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### SEARCH RESULTS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

### SECTION 2(E)(1) - MERE DESCRIPTIVENESS REFUSAL

Registration is refused because the applied-for mark merely describes a feature of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

Here, applicant's mark combines **BISCOTTI**, meaning "a crisp cookie or biscuit of Italian origin that is flavored usually with anise and filberts or almonds" and **CRISPS**, meaning "something crisp or brittle" for **crisp cookies**. See Attachment 1 — Merriam-Webster's Online Dictionary, 11th Edition definition of BISCOTTI; see also Attachment 2 — Merriam-Webster's Online Dictionary, 11th Edition definition of CRISP. The composite of these terms is neither inventive nor does it evoke a unique commercial impression beyond the original descriptive significance of each component part. In fact, entities other than applicant use the phrase **BISCOTTI CRISPS** to identify the type of goods. See Attachment 3 — websites of entities other than applicant using the phrase BISCOTTI CRISPS to identify the type of goods. As used in this manner, and applicant's own use on the specimen of record, purchasers will not perceive the mark as identifying any one entity as the source of the goods.

Ultimately, when purchasers encounter applicant's **crisp cookies** using the mark **BISCOTTI CRISPS**, they will immediately understand the mark as an indication of a feature and/or the type of applicant's goods that they are **crisp cookies**, and not an indication that applicant is the **source** of the goods. Therefore, the mark is merely descriptive of a feature of applicant's goods and registration is refused pursuant to Section 2(e)(1) of the Trademark Act.

### Response to Section 2(e)(1) - Mere Descriptiveness Refusal

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

## Advisory – Neither Principal Register Under Section 2(f) nor Supplemental Register Recommended

In addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for applicant's goods. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Pennzoil Prods. Co.*, 20 USPQ2d 1753 (TTAB 1991); *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a). Under these circumstances, neither an amendment to proceed under Trademark Act Section 2(f) nor an amendment to the Supplemental Register can be recommended. *See* TMEP §1209.01(c).

### ADVISORY - TEAS PLUS REQUIREMENTS

### TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT

FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

### RESPONDING TO THIS OFFICE ACTION

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements and request that the Office enter them into the application record.

Applicant's response must be properly signed by (1) the individual applicant (for joint individual applicants, both must sign) or (2) someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). See 37 C.F.R. §§2.62(b), 2.193(a), (e)(2)(ii); TMEP §§611.03(b), 611.06 et seq., 712.01. If applicant retains an attorney, the attorney must sign the response. 37 C.F.R. §2.193(e)(2)(i); TMEP §§611.03(b), 712.01. The individual(s) signing must personally sign or personally enter his/her electronic signature. See 37 C.F.R. §2.193(a), (e)(2)(ii); TMEP §§611.01(b), 611.02.

If applicant does not respond to this Office action within six months of the issue/mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. See 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. In such case, applicant's only option would be to file

a timely petition to revive the application, which, if granted, would allow the application to return to live status. See 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. See 37 C.F.R. §\$2.6, 2.66(b)(1).

If the applicant has any questions or needs further assistance, please telephone the assigned examining attorney.

/Myriah A. Habeeb/ Myriah A. Habeeb Trademark Examining Attorney Law Office 105 Phone; 571.272.8909

Informal Email: Myriah.Habeeb@uspto.gov

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <a href="http://teasroa.uspto.gov/roa/">http://teasroa.uspto.gov/roa/</a>. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail <a href="mailto:TEAS@uspto.gov">TEAS@uspto.gov</a>.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

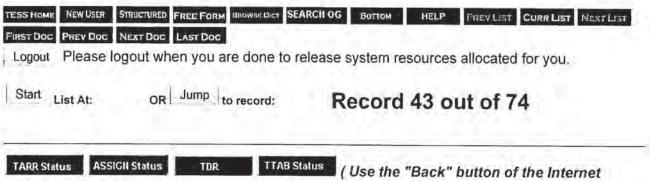
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TESS was last updated on Wed Jun 6 04:35:46 EDT 2012



Browser to return to TESS)

## **BAKED LENTIL CRISPS**

Word Mark BAKED LENTIL CRISPS

Goods and Services (ABANDONED) IC 029. US 046. G & S: Vegetable-based snack foods

Standard Characters

Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85137969

Filing Date September 24, 2010

Current Basis 1B Original Filing Basis 1B

Owner (APPLICANT) The Mediterranean Snack Food Company, LLC LIMITED LIABILITY COMPANY NEW

JERSEY 708 Main Street Boonton NEW JERSEY 07005

Attorney of Record John Brooks Baldini, Esq.

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Abandonment Date July 4, 2011

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG TOP HELP FREY LIST CURR LIST NEXT LIST
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To: The Mediterranean Snack Food Company, LL ETC. (

trademarks@mchattielaw.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85137969 - BAKED LENTIL

CRISPS - N/A

Sent: 1/4/11 10:30:19 AM

Sent As: ECOM102@USPTO.GOV

Attachments: Attachment - 1

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### UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85137969

MARK: BAKED LENTIL CRISPS

\*85137969\*

CORRESPONDENT ADDRESS:

JOHN BROOKS BALDINI, ESQ. THE MCHATTIE LAW FIRM 550 W MAIN ST BOONTON, NJ 07005-1168

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/teas/eTEASpageD.htm

APPLICANT:

The Mediterranean Snack Food

Company, LL ETC.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

trademarks@mchattielaw.com

### OFFICE ACTION

### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 1/4/2011

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must

continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

#### Search Clause

The Office records have been searched and there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

### Section 2(e)(1) - Descriptiveness Refusal

Registration is refused because the applied-for mark merely describes a feature or ingredient of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

In addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for applicant's goods. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Pennzoil Prods. Co.*, 20 USPQ2d 1753 (TTAB 1991); *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a). Under these circumstances, neither an amendment to proceed under Trademark Act Section 2(f) nor an amendment to the Supplemental Register can be recommended. *See* TMEP §1209.01(c).

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

In the instant case, the applicant seeks to register the mark BAKED LENTIL CRISPS for vegetable-based snack foods. In relation to the subject goods, the mark is merely descriptive of a feature or ingredient.

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

As the attached "Dictionary.com" evidence shows, the terms making up the mark merely describe the goods. The term baked merely describes a manner of cooking. The term lentil describes a legume used as a food source. The term crisps is defined as a type of thinly sliced food made from various sources.

Generally, a mark that merely combines descriptive words is not registrable if the individual components retain their descriptive meaning in relation to the goods and/or services and the combination results in a composite mark that is itself descriptive. TMEP §1209.03(d); see, e.g., In re King Koil Licensing Co. Inc., 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs and pillows where the evidence showed that the term "BREATHABLE" retained its ordinary dictionary meaning when combined with the term "MATTRESS" and the resulting combination was used in the relevant industry in a descriptive sense); In re Associated Theatre Clubs Co., 9 USPQ2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services because such wording "is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression").

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. See, e.g., In re Colonial Stores, Inc., 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968).

In this case, both the individual components and the composite result are descriptive of applicant's goods and/or services and do not create a unique, incongruous or nondescriptive meaning in relation to the goods and/or services. Specifically, the attached GOOGLE search database evidence shows that "baked lentil crisps" are commonly used to describe a snack food item prepared from baked lentils. Moreover, the applicant's specimens of use indicate that the goods are made from real lentils.

Thus, the mark, BAKED LENTIL CHIPS, for vegetable-based snack foods, merely describes the goods. As such, the examining attorney must refuse registration pursuant to Section 2(e)(1) of the Trademark Act.

### Informality

Applicant is advised that, if the application is amended to seek registration on the Principal Register under Trademark Act Section 2(f) or on the Supplemental Register, applicant must disclaim "CHIPS" because such wording appears to be generic in the context of applicant's goods and/or services. See attached "Dictionary.com" evidence. See 15 U.S.C. §1056(a); In re Wella Corp., 565 F.2d 143, 196 USPQ 7 (C.C.P.A. 1977); In re Creative Goldsmiths of Wash., Inc., 229 USPQ 766 (TTAB 1986); TMEP §1213.03(b).

The following is the accepted format for a disclaimer:

No claim is made to the exclusive right to use "CRISPS" apart from the mark as shown.

TMEP §1213.08(a)(i).

### Response Guidelines

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number

and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

/Matthew C. Kline/ Trademark Attorney Law Office 103 (571) 272-9454

TO RESPOND TO THIS LETTER: Use the Trademark Electronic Application System (TEAS) response form at <a href="http://teasroa.uspto.gov/roa/">http://teasroa.uspto.gov/roa/</a>. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail <a href="mailto:TEAS@uspto.gov">TEAS@uspto.gov</a>.

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PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

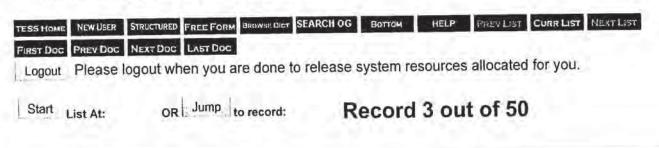
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TESS was last updated on Wed Jun 6 04:35:46 EDT 2012



TARR Status

**ASSIGN Status** 

TDR

**TTAB Status** 

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Browser to return to TESS)

# LEAN CRISPS

Word Mark

LEAN CRISPS

Goods and Services

(ABANDONED) IC 029. US 046. G & S: Processed eggs; Protein based, nutrient-dense snack

(ABANDONED) IC 030, US 046, G & S: Cookies and crackers

Standard Characters

Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number 85366053 July 7, 2011 **Filing Date** 

1B **Current Basis Original Filing Basis** 

(APPLICANT) John Miller INDIVIDUAL UNITED STATES 23644 Maple Springs Dr. Diamond Bar Owner

CALIFORNIA 91765

Jeffrey Jue Attorney of Record TRADEMARK Type of Mark PRINCIPAL Register DEAD Live/Dead Indicator

April 26, 2012 Abandonment Date

PREVIOUS CURR LIST NEXT LIST NEW USER STRUCTURED FREE FORM BROWSE DICT SEARCH OG HELP

NEXT DOC LAST DOC FIRST DOC PREV DOC

To:

John Miller (jjue@catalystipgroup.com)

Subject:

U.S. TRADEMARK APPLICATION NO. 85366053 - LEAN CRISPS -

JCM02

Sent:

10/25/2011 6:09:40 PM

Sent As:

ECOM117@USPTO.GOV

Attachments: Attachment - 1

Attachment - 2

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO.

85366053

MARK: LEAN CRISPS

\*85366053\*

CORRESPONDENT ADDRESS:

JEFFREY JUE 797 VIA SOMONTE

PALOS VERDES ESTATES, CA 90274-1629

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response forms.jsp

APPLICANT:

John Miller

CORRESPONDENT'S REFERENCE/DOCKET

NO:

JCM02

CORRESPONDENT E-MAIL ADDRESS:

jjue@catalystipgroup.com

### OFFICE ACTION

### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

#### ISSUE/MAILING DATE: 10/25/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

### Search of the Office Records

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

### Refusal to Register-Mark is Merely Descriptive

Registration is refused because the applied-for mark merely describes a feature of the applicant's goods... Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

The applicant seeks to register LEAN CRISPS for use on processed eggs; protein based, nutrient-dense snack foods and cookies and crackers.

Generally, a mark that merely combines descriptive words is not registrable if the individual components retain their descriptive meaning in relation to the goods and/or services and the combination results in a composite mark that is itself descriptive. TMEP §1209.03(d); see, e.g., In re King Koil Licensing Co. Inc., 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs and pillows where the evidence showed that the term "BREATHABLE"

retained its ordinary dictionary meaning when combined with the term "MATTRESS" and the resulting combination was used in the relevant industry in a descriptive sense); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services because such wording "is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression").

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. See, e.g., In re Colonial Stores, Inc., 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968).

As set forth in the attached definitions, the term "LEAN" is an adjective that is defined as "containing little or no fat" and "CRISP" is a noun that is defined as "something crisp or easily crumbled." Both the individual components "LEAN" and "CRISPS" and the composite result "LEAN CRISPS" are descriptive of applicant's goods and/or services and do not create a unique, incongruous or nondescriptive meaning in relation to the goods and/or services. Specifically, they immediately describe two significant features of the applicant's goods.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

#### Supplemental Register Advisory

A mark in an application under Trademark Act Section 1(b) is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been filed. 37 C.F.R. §§2.47(d), 2.75(b); TMEP §§815.02, 1102.03. When a Section 1(b) application is successfully amended to the Supplemental Register, the effective filing date of the application will be the date on which applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§816.02, 1102.03.

#### Disclaimer

Applicant is advised that, if the application is amended to seek registration on the Principal Register under Trademark Act Section 2(f) or on the Supplemental Register, applicant must disclaim "CRISPS" because such wording appears to be generic in the context of applicant's goods and/or services. See 15 U.S.C. §1056(a); In re Wella Corp., 565 F.2d 143, 196 USPQ 7 (C.C.P.A. 1977); In re Creative Goldsmiths of Wash., Inc., 229 USPQ 766 (TTAB 1986); TMEP §1213.03(b).

The following is the standardized format for a disclaimer:

No claim is made to the exclusive right to use "CRISPS" apart from the mark as shown.

TMEP §1213.08(a)(i).

FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

/Patty Evanko/ Trademark Attorney Law Office 117 571-272-9404 patty.evanko@uspto.gov (questions only)

TO RESPOND TO THIS LETTER: Go to <a href="http://www.uspto.gov/trademarks/teas/response">http://www.uspto.gov/trademarks/teas/response</a> forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For technical assistance with online forms, e-mail <a href="mailto:TEAS@uspto.gov">TEAS@uspto.gov</a>. For questions about the Office action itself, please contact the assigned trademark examining attorney. E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <a href="http://www.uspto.gov/teas/eTEASpageE.htm">http://www.uspto.gov/teas/eTEASpageE.htm</a>.

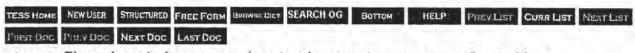


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## Parmesan Crisps

Word Mark

PARMESAN CRISPS

Goods and Services IC 005. US 006 018 044 046 051 052. G & S: Wheat-free and gluten-free cheese cracker for the treatment of special medical and health conditions. FIRST USE: 20060625. FIRST USE IN

COMMERCE: 20060705

IC 029. US 046. G & S: Cheese food. FIRST USE: 20060625. FIRST USE IN COMMERCE: 20060705

IC 030. US 046. G & S: Cookies and crackers; Cracker and cheese combinations. FIRST USE:

20060625. FIRST USE IN COMMERCE: 20060705

Standard Characters Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

85548127

Filing Date

February 21, 2012

Current Basis

1A

Original Filing Basis

1A

Owner

(APPLICANT) Kitchen Table Bakers DBA Kitchen Table Bakers LIMITED LIABILITY COMPANY NEW

YORK 41 PRINCETON DR SYOSSET NEW YORK 11791

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator LIVE

To:

Kitchen Table Bakers (snovick@kitchentablebakers.com)

Subject:

U.S. TRADEMARK APPLICATION NO. 85548127 - PARMESAN

CRISPS - N/A

Sent:

6/2/2012 11:22:05 AM

Sent As:

ECOM102@USPTO.GOV

Attachments: Attachment - 1

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### UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85548127

MARK: PARMESAN CRISPS

\*85548127\*

CORRESPONDENT ADDRESS:

KITCHEN TABLE BAKERS KITCHEN TABLE BAKERS 41 PRINCETON DR SYOSSET, NY 11791-6741

APPLICANT:

Kitchen Table Bakers

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#### CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

#### CORRESPONDENT E-MAIL ADDRESS:

snovick@kitchentablebakers.com

#### OFFICE ACTION

#### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

#### ISSUE/MAILING DATE: 6/2/2012

#### Section 2(e)(1) Refusal

Registration is refused because the applied-for mark merely describes an ingredient and feature of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); see, e.g., *In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); In re Digital Research Inc., 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). In other words, when consumers see the proposed mark placed on the goods or in an advertisement for the services, they will simply perceive it as conveying a descriptive characteristic of the goods and/or services and will not perceive it as a source indicator for the goods and/or services.

"A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services." In re Oppedahl & Larson LLP, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if the term describes only one significant function, attribute or property. In re Oppedahl, 373 F.3d at 1173, 71 USPQ2d at 1371; TMEP §1209.01(b).

The mere combination of descriptive words does not automatically create a new nondescriptive word or

phrase. See, e.g., In re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) (holding SMARTTOWER merely descriptive of "commercial and industrial cooling towers and accessories therefor, sold as a unit"); In re Sun Microsystems, Inc., 59 USPQ2d 1084 (TTAB 2001) (holding AGENTBEANS merely descriptive of "computer software for use in development and deployment of application programs on a global computer network"); In re Copytele, Inc., 31 USPQ2d 1540 (TTAB 1994) (holding SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays); In re Entenmann's, Inc., 15 USPQ2d 1750 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts), aff'd per curia m, 928 F.2d 411 (Fed. Cir. 1991).

Applicant's proposed mark is PARMESAN CRISPS for various food items. Applicant's identification of goods indicates that cheese is an ingredient of the goods in each class. The term PARMESAN describes an ingredient of the goods. Further, the term CRISPS merely describes a feature of the goods, namely, that the goods are crisp. [1] Consumers are accustomed to viewing the terms in the mark in connection with the crackers and therefore will view the proposed mark as descriptive and not a source indicator. [2]

In this case, the combination of the descriptive words creates no incongruity, and no imagination is required to understand the nature of the goods. Consequently, the proposed mark is refused registration because it is descriptive under Section 2(e)(1) of the Trademark Act. Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

In addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for applicant's goods. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Pennzoil Prods. Co.*, 20 USPQ2d 1753 (TTAB 1991); *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a). Under these circumstances, neither an amendment to proceed under Trademark Act Section 2(f) nor an amendment to the Supplemental Register can be recommended. *See* TMEP §1209.01(c).

If applicant responds to the refusal noted above, applicant must respond timely and completely to the issue below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

#### Information Requirement

Applicant must answer the inquiry below to permit proper examination of the application. See 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e).

- 1. Will the goods include parmesan cheese?
- 2. Describe the "cheese food" goods in class 29.

Failure to respond to a request for information can be grounds for refusing registration. TMEP §814; see In re Cheezwhse.com, Inc., 85 USPQ2d 1917, 1919 (TTAB 2008); In re DTI P'ship LLP, 67 USPQ2d 1699, 1701-02 (TTAB 2003). Merely stating that information about the goods or services is available on applicant's website is an inappropriate response to a request for additional information, and is insufficient to make the relevant information of record. See In re Planalytics, Inc., 70 USPQ2d 1453, 1457-58 (TTAB 2004).

#### Specimens

The specimens do not show the applied-for mark used in connection with any of the goods specified in the

application. An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each class of goods and/or services. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

In this case, the specimens consist of two items. One item appears to be information about the applicant along with a phone number. The mark does not appear on this item. The second item is not legible. It appears to be a plastic package but it cannot be determined what are the goods or if the mark appears on the package. Applicant is reminded that it must submit a specimen for each class of goods. Therefore, applicant must submit the following:

- (1) A substitute specimen showing the mark in use in commerce for each class of goods specified in the application; and
- (2) The following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "The substitute specimen was in use in commerce at least as early as the filing date of the application." 37 C.F.R. §2.59(a); TMEP §904.05; see 37 C.F.R. §2.193(e)(1). If submitting a substitute specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

Examples of specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, or displays associated with the actual goods at their point of sale. See TMEP §§904.03 et seq.

If applicant cannot satisfy the above requirements, applicant may amend the application from a use in commerce basis under Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c), (d); 37 C.F.R. §§2.76, 2.88; TMEP §1103.

To amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods listed in the application as of the filing date of the application." 37 C.F.R. §2.34(a)(2); TMEP §806.01(b); see 15 U.S.C. §1051(b); 37 C.F.R. §\$2.35(b)(1), 2.193(e)(1).

Pending receipt of a proper response, registration is refused because the specimen does not show the applied-for mark in use in commerce as a trademark mark for the identified goods. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. See 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus

applicants who do not meet these requirements must submit an additional fee of \$50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

/Christopher Buongiorno/ Christopher Buongiorno, Attorney Law Office 102 (571) 272-9251 christopher.buongiorno@uspto.gov

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All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <a href="http://www.uspto.gov/trademarks/process/status/">http://www.uspto.gov/trademarks/process/status/</a>.

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<sup>[11]</sup> See attached dictionary definition of the term "crisps" retrieved from http://www.collinsdictionary.com on June 2, 2012.

<sup>[2]</sup> See attachments retrieved from a search on www.google.com performed on June 2, 2012.

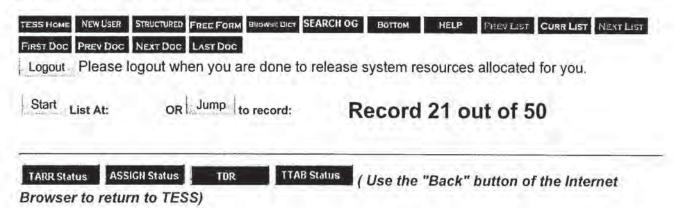


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#### SAN FRANCISCO SOURDOUGH CRISPS

Word Mark SAN FRANCISCO SOURDOUGH CRISPS

Goods and Services IC 030. US 046. G & S: Bakery products. FIRST USE: 201111118. FIRST USE IN COMMERCE:

20111118

Standard Characters

Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85320220 Filing Date May 13, 2011

**Current Basis** 1A Original Filing Basis **1B** 

Date Amended to Current

Register

Registration Number

4094814

December 1, 2011

Registration Date

January 31, 2012

Owner (REGISTRANT) Boudin IP, Inc. CORPORATION DELAWARE 221 Main Street, Suite 1250 San.

Francisco CALIFORNIA 94105

Attorney of Record Karen S. Frank Type of Mark TRADEMARK Register SUPPLEMENTAL

Live/Dead Indicator LIVE

NEW USER STRUCTURED FREE FORM BROWSE DIET SEARCH OG FIRST DOC PREV DOC NEXT DOC LAST DOC

To: Boudin IP, Inc. (tm@cpdb.com)

Subject: U.S. TRADEMARK APPLICATION NO. 85320220 - SAN FRANCISCO

SOURDOUGH CRISPS - 03225-005

Sent: 6/24/2011 2:20:34 PM

Sent As: ECOM110@USPTO.GOV

Attachments: Attachment - 1

Attachment - 2

Attachment - 3

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Attachment - 5

Attachment - 6

Attachment - 7

Attachment - 8

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85320220

MARK: SAN FRANCISCO SOURDOUGH CRISPS

\*85320220\*

CORRESPONDENT ADDRESS:

KAREN S. FRANK COBLENTZ, PATCH, DUFFY & BASS, LLP I FERRY BUILDING STE 200 SAN FRANCISCO, CA 94111-4213

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response\_forms.jsp

APPLICANT: Boudin IP, Inc.

CORRESPONDENT'S REFERENCE/DOCKET

NO:

03225-005

CORRESPONDENT E-MAIL ADDRESS:

tm@cpdb.com

#### OFFICE ACTION

#### STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE BELOW.

#### ISSUE/MAILING DATE: 6/24/2011

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

#### SUMMARY OF ISSUES

## Mark is Merely Descriptive SECTION 2(e)(1) REFUSAL – MERELY DESCRIPTIVE

Registration is refused because the applied-for mark merely describes an feature and ingredient of applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); see TMEP §§1209.01(b), 1209.03 et seq.

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); see In re Steelbuilding.com, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); In re Gyulay, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Moreover, a mark that identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive. TMEP §1209.03(i); see In re Planalytics, Inc., 70 USPQ2d 1453, 1454 (TTAB 2004).

Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. In re Abcor Dev. Corp., 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. See In re Styleclick.com Inc., 58 USPQ2d 1523, 1527 (TTAB 2001). Generally, a mark that merely combines descriptive words is not registrable if the individual components retain their descriptive meaning in relation to the goods and/or services and the combination results in a composite mark that is itself descriptive. TMEP §1209.03(d); see, e.g., In re King Koil Licensing Co. Inc., 79 USPO2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs and pillows where the evidence showed that the term "BREATHABLE" retained its ordinary dictionary meaning when combined with the term "MATTRESS" and the resulting combination was used in the relevant industry in a descriptive sense); In re Associated Theatre Clubs Co., 9 USPO2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services because such wording "is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression").

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. See, e.g., In re Colonial Stores, Inc., 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968).

In this case, both the individual components and the composite result are descriptive of applicant's goods and/or services and do not create a unique, incongruous or nondescriptive meaning in relation to the goods and/or services. Specifically, SAN FRANCISCO is where the goods originate and SOURDOUGH CRISPS is what the goods are. The wording is merely descriptive of the goods.

Accordingly, the mark is refused based on 2(e)(1) of the Trademark Act.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

#### SUPPLEMENTAL REGISTER

A mark in an application under Trademark Act Section 1(b) is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use under 37 C.F.R. §2.76 has been filed. 37 C.F.R. §§2.47(d), 2.75(b), 2.76(b), (c); TMEP §§815.02, 1102.03. When a Section 1(b) application is successfully amended to the Supplemental Register, the effective filing date of the application will be the date applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§206.01, 816.02, 1102.03, 1104.01.

#### CONTACT THE EXAMINING ATTORNEY

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP §§705.02, 709.06.

/Dezmona J. Mizelle-Howard/

Dezmona J. Mizelle-Howard Dezmona.Mizelle@uspto.gov United States Patent and Trademark Office Law Office 110 571,272,9368

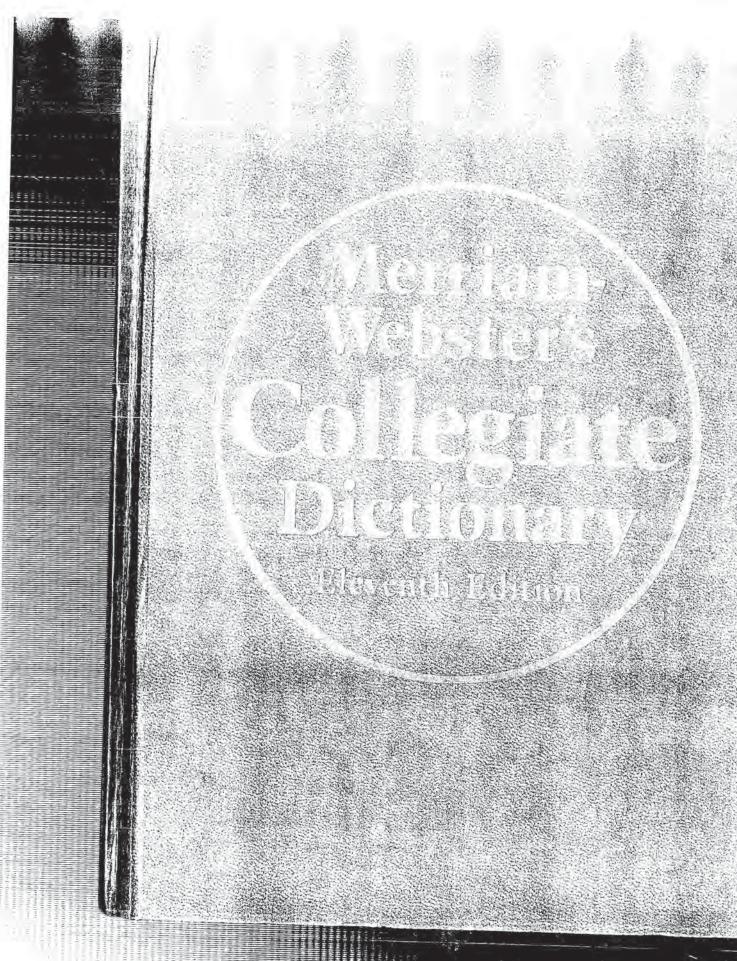
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All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

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crim con abbr criminal conversation crime \( \text{krim} \) \( n \) [ME, fr. AF, fr. L crimen accusation, reproach, crime: prob. akin to L cernere to sift, determine] (14c) 1: an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law, esp: a gross violation of law 2: a grave offense esp. against morality 3: criminal activity \(\color{c}\) (fts to \( \text{light} \) \( \text{\text{\text{dist}}} \) (a value of \( \text{\text{light}} \) \( \text{\text{\text{\text{dist}}}} \) (b) a contained by that law, esp: a gross violation of law 2: a grave offense esp. against morality 3: crimineless \( \text{\te

rea-\n criminal law n (1769); the law of crimes and their punishments criminal lawyer n-(1869); a lawyer who specializes in criminal law; esp; a lawyer who represents defendants in criminal cases crimi-nate \\dot\kit-ino-\natkit\natk crimini var of CREMINI

crimi-ina-tion \kri-ina-'nā-shan\ n crimini var of CREMINI
crimi-inol-o-gy \kri-ina-'nā-shan\ n [It criminologja, fr. L crimin-crimen + lt.-n-+ -logia -logy] (1882): the scientific study of crime as a social phenomenon, of criminals, and of penal treatment — crimi-inologi-ceal\-m-a-n\-l'a-ji-kol\ adj — crimi-ino-log-j-ceal-ly\-k(a-)le\ adv
— crimi-inol-o-gist\-k(a-im-a-n\-l'a-ji-kol\) adj — crimi-ino-log-j-ceal-ly\-k(a-)le\ adv
— crimi-inous\-k(xi-m-a-n\-l\-a\-ji-kol\) adj (15c): CRIMINAL
crimi-iny\-k(xi-ma-n\-l\-a\-ji-kol\) adj (15c): CRIMINAL
crimi-iny\-k(xi-ma-n\-l\-a\-ji-kol\) adj (15c): CRIMINAL
crimi-iny\-k(xi-ma-n\-l\-a\-ji-kol\) fiber [Borh. alter of liminy, gemini, mild
outh, prob. cuphemism for LL leva domine Jesus Lord!] (1681) — used
as a mild outh or to express surprise
crimp\-k(xi-ma)\-k(xi-ma-n\-l\-a\-ji-kol\) for LG krimpen to startvel; akin to MD crampe
hook, cramp] (1712) 1: to cause to become wavy, bent, or pinched: as
a it form (leather) into a absired shape b: to give (synthetic fibers)
a curl or wave like that of natural fibers c: to pinch or poss together
fas the margins of a pic crusty in order to seal 2: to be an inhibiting or
restraining influence on: CRAMP (sales had ben \(\sigma\) by redit conlrols \(\sigma\) fime\(\sigma\) — crimp-er\-k(xi-m-por\n) n

crimp\(\sigma\) (1863) : something produced by or as if by crimping; as
i a section of hair artificially waved or curled b: a succession of
waves (as in woof fiber) C: a bend or crease formed in something 2
something that cramps or inhibits: RESTRAINT, CURR
crimp\(\sigma\) (18(2): to trap into milibits: RESTRAINT, CURR
crimp\(\sigma\) (18(2): to trap into m



cri-o-llo \krē-'ōl-(,)yō, -'ō-(,)yō\ n, pl -llos [Sp — more at CREOLē] (1604) 1 a : a person of pure Spanish descent born in Spanish America b : a person born and usu, raised in a Spanish-American country 2 : a domestic animal of a breed or strain (as of cattle) developed in Latin America; esp, often cap : any of a breed of hardy muscular ponies orig. developed in Argentina — criollo adj
cripes \'krips\\ interj [euphemism for Christ] (1910) — used as a millo oth

origes (krips) interf [euphemism for Christ] (1910) — used as a mild oath crip-ple (kri-pol) n [ME cripel, fr. OE crypel, akin to OE creopun to creep — more at CREED] (bef. 12c) — 1 a sometimes offensive; a lame or partly disabled person or animal b; one that is disabled or deficient in a specified manner (a social ~) = 2; something flawed or imperfect cripple adj (13c); being lame, flawed, or imperfect cripple adj (13c); being lame, flawed, or imperfect cripple w crip-pled; crip-pling [-ye-]inj(-14c) — 1; to deprive of the use of a limb and esp. a leg (the accident left him crippled) = 2; to deprive of capability for service or of strength, efficiency, or wholenes (an economy crippled by inflation) = 57n see MaIM, weaker — crippler (-ye)(a-)lay n — crip-pling-ly (-ye)(a-)lig-lê adv criss). Wirf-sask n, pl cri-ses (kri-sask), [ME, Ir. L. fr. Gk krisis, lit., de cision, fr krimein to decide — more at Certain [15c) — 1 a z the turning point for better or worse in an acute disease or fever — b: a paroxysmal attack of pain, distress, or disordered function— C: an emotion ally significant event or radical change of status in a person's life (a middlie ~) 2; the decisive moment (as in a literary plot) 3 a z in unstable or crucial time or state of affairs in which a decisive change is impending; esp : one with the distinct possibility of a highly undesignable outcome (a financial ~) b: a situation that has reached a critical phase (the environmental ~) syn see runctore [crisp-lythsp) adj [ME, Ir. OE, Ir. Leringus; akin to W crych curly] (bet 12c)—1: curly, wwy, also: having close stiff or wiry curls or wave 2 a : easily crumbled: BRITTLE (a ~ cracker) b: desirably firm and crunchy (~ lettuce)—3 a: notably sharp, clean-cut, and clear (a ~ illustration); nlsa: concise and to the point (a ~ valie wine) e: defin and powerfully executed (a ~ tennis serve)—5 yn see Fragille (crisp-lyther—crisp-ness n crisp-lyther—crisp-leases n crisp-lyther—crisp-leases n crisp-lyther—crisp-leases n crisp-lyther—crisp-leases n crisp-lyther—

scrisp n (14c) 1 a : something crisp or brittle (burned to a ~) (re-s) b chiefly Brit : potato CHP — usu, used in pl. 2 : a baked desert of fruit with crumb topping (apple ~) crisp-bread \(\frac{1}{2}\) knsp-bred\(\frac{1}{2}\) (real 1921) : a plain dry unsweetened crack cr made from crushed grain (as wheat or rye) trisp-en \(\frac{1}{2}\) krisp-an\(\frac{1}{2}\) (respectively) is to make crisp \(\sim vi\): to become crisp crisp-er \(\frac{1}{2}\) kris-par\(\frac{1}{2}\) or (1835): one that crisps, speciff: a closed contained in a refrigerator intended to prevent loss of moisture from fresh produces

crisp-head \krisp-heal\n (1966): ICEBERG LETTUCE
crisp-head \krispe\udf crisp-heir; -est (14c) 1: CRISP 1 \ hair\ ?
: appealingly crunchy: CRISP \ Tried chicken\ - crisp-i-ness n
criss-cross \kris-kros\ vh fobs, christeras, crisseras, mark of a cros\
1 (1818) 1: to mark with intersecting lines 2: to pass back and
forth through or over \ n 1: to go or pass back and forth ?

crisscross and (1830); marked or characterized by crisscrossing crisscross and (1833) 1: a crisscross pattern: Nerwork 2: the star

of being at cross-purposes; also: a confused state cris-ta \kris-to\n, pl cris-tae \-ie, -,ii\ [NL, fr. L. crest — more of CREST] (1959); any of the inwardly projecting folds of the inner men

crimson and (1201) to make crimson or (1601) to make crimson or (1601) to make crimson of (1601) to make crimson clover (1809); an annual European clover (Trifolium incommum) that has exhidrical heads of crimson flowers and is cultivated in the U.S. sep, as a cover crop crimge Vkrim) it crimged; cringing [ME creagen; akin to OE cringan to yield, MHG frank weak] (180-) 1; to draw in or contract one small conditions and the cultivated in the U.S. sep, as a cover crop cringe Vkrim) it crimged; cringing [ME creagen; akin to OE cringan to yield, MHG frank weak] (180-) 1; to draw in or contract one small conditions and the same accessively numble or servite way 4; to recoil in distaste (Americans crimged), at the use of a term now regarded as a slur —William Safrice). Syn sec fawn—cringer in crimger in crimger in the corner of a sail to which a line is attached crimkler (Krimsal) and [IG kringed], and [IG crinkling vKrimsal) and [IG kringed], and [IG crinkling vKrimsal) and [IG kringed] and provided as a singular for over half continued accordability in the crinkling view in the corner of a sail to which a line is attached crinkler (Krimsal) and [IG kringed], and [IG crinkling vKrimsal) and [IG kringed] and [IG crinkling vKrimsal) and [IG kringed] and [IG crinkling vKrimsal) and [IG crin

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F F 7 1 490 1 7 (4.0) 7 (4.1) Crisp noun

- 1 a: something crisp or brittle <burned to a crisp> <rye crisps> bchiefly British: POTATO CHIP -usually used in plural
- 2 : a baked dessert of fruit with crumb topping <apple crisp> See crisp defined for English-language learners »

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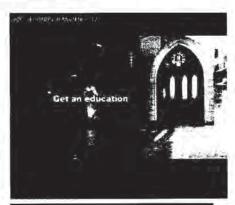
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